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IN THE
SUPREME COURT OF THE UNITED STATES

Term, 1972

ARCHIE PELTZMAN,

Petitioner,

-against-

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ARCHIE PELTZMAN
8725 16th Avenue
Brooklyn, New York 11214
Petitioner Pro Se

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IN THE
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NATIONAL LABOR RELATIONS BOARD,

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PETITION FOR A WRIT OF CERTIORARI TO
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FOR THE SECOND CIRCUIT

The petitioner, Archie Peltzman, prays that a writ of certiorari be issued to review a final decree of the United States Circuit Court of Appeals for the Second Circuit entered on April 4, 1972 (Appendix A) granting the motion of the respondent, National Labor Relations Board (hereinafter called "Board"), for the dismissal of petitioner's motion for petition to review a decision of the Board, which refused to issue an unfair labor complaint against the American Radio Association and the

Central Gulf Steamship Co. for lack of jurisdiction. Petitioner's motions to adduce additional evidence and directing respondent to produce the record for review were denied on the same date (Appendix B & C). A petition for rehearing by petitioner was denied on April 24, 1972 (Appendix D).

OPINIONS BELOW

No opinion has been filed as of May 8, 1972.

JURISDICTION

The final decree of the United States Circuit Court of Appeals for the Second Circuit was entered on April 4, 1972. The rehearing was denied on April 24, 1972.

The jurisdiction of this Court is invoked under Section 1252 and 1254(1) of Title 28 U.S.C. and Section 10(e) and (f) of the National Labor Relations Act, July 5, 1935, C. 372 Sec. 10, 49 Stat. 453 (29 U.S.C.A. Section 160(e) and (f).

QUESTIONS PRESENTED

1. Does the Second Circuit Court of Appeals have jurisdiction to review a decision of the General Counsel of the National Labor Relations Board, who refused to issue an unfair labor practice complaint

against the American Radio Association, a union of Radio Officers, and the Central Gulf Steamship Co., the employer of the Complainant, after his appeal was denied and the case closed?

2. Does a private contract between the union and the Steamship Co. under a so-called union security clause, calling for dismissal from employment of a seaman from his job, unless he pays within thirty days from date demanded, an initiation fee, together with arrears of all dues and fees, required for acquiring union membership, supercede the provisions of Title 46 U.S.C. 599, 41 Stat. 1006, Sec. 10(a), which prohibits anyone from demanding or receiving money from a seaman for providing him with employment, under a penalty of a misdemeaner, with a fine of 500 dollars or six months imprisonment?

3. Does the power of the National Labor Relations Board under Sec. 10(c) of the Act, to take such action "as will effectuate the policies of the Act," include the duty to give effect to all statutes, and to undertake the accomodation of one statutory scheme of Congress to another, without excessive emphasis upon its own immediate task?

4. Does the fifth, ninth, and fourteenth amendments of the United States Constitution protect a citizen from dismissal from his employment, irregardless of any private contract between and company and a union, which requires membership in good standing as a condition of employment?

5. Does a union have a right to automatically expel a union member for non-payment of dues without notifying him of his expulsion or giving him a hearing to explain his delinquency of dues?

Constitutional Provisions involved Constitution of the United States, Amendment V.

> "No person shall....nor be deprived of life, liberty or property, without due process of law."

Constitution of the United States, Amendment XIV, Sec. 1:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Constitution of the United States, Amendment IX:

> "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Statutes involved: Section 10(3) and (f) of the National Labor Relations Act, July 5, 1935 C. 372 Sec. 10, 49 Stat. 453 (29 U.S.C.A. Sections 160(e) and (f).

Title 46 U.S.C. 599, 41 Stat. 1006, Sec. 10(a), Merchant Marine Act 1920 ....

"If any person shall demand or receive, either directly or indirectly, from any seaman or other person seeking employment, as seaman, or from any person on his behalf, any renumeration whatever for providing him with employment, he shall for every such offense be deemed guilty of a misdeameanor and shall be imprisoned not more than six months or fined not more than $500.

STATEMENT OF FACTS

The petitioner, Archie Peltzman, joined the American Communications Association, the predecessor of the American Radio Association, in 1943 (Appendix K). He sailed in the Merchant Marine from October 1943 until June 1949, the date the United States Coast Guard refused to issue a Radio Officer's License to petitioner, claiming petitioner was either a member of the Communist Party or sympathetic to its principles.

It was not until August 1967 when petitioner received a Radio Officer's License from the United States Coast Guard, as a result of suing the Commandant of the Coast Guard in United States Federal Court (*Peltzman v. Smith*, C.A.N.Y. 404 F. 2d, 335) that petitioner resumed sailing again through the same union he had belonged to previously, which now called itself the American Radio Association.

When petitioner could no longer sail in the Merchant Marine due to United States Coast Guard refusal to issue a Radio Officer's license, his union gave him an inactive assignment slip dated March 17, 1950 (Appendix L) and the official explained that if he received his Radio Officer's License in the succeeding months, he would not have to pay a withdrawal fee (which amounted then to one year's dues), but only the dues for the intervening months from March 17, 1950 to date of receipt of Radio Officer's License and then in the event that more than a year elapsed he could apply for a withdrawal card from the union.

When petitioner applied for reinstatement to the union in December 1967, the official who gave him a permit card to sign, Mr. Bernard Smith, the Secretary-Treasurer, told him this was the procedure that old and new members had to go through in order to join or rejoin the union. Petitioner at that time, when he filled out the permit card, saw a line on the card which said initiation fee and told Mr. Smith, that he didn't think he should have to pay the initiation fee, but that he would pay a withdrawal fee. Mr. Smith replied that since petitioner would have to sail as a permit card member for one year, he would at that time talk about the initiation fee, and in the meantime petitioner would only have to pay the dues required from all members of the union.

After one year passed, the union demanded $2,000 from the petitioner as an initiation fee and petitioner refused to pay it, whereupon he was told that he would

no longer be able to sail from the Group 1 list but would lose seniority and be on the Group 2 list.

Whereupon petitioner wrote a letter pursuant to the regulations of the union to the American Merchant Marine Institute and asked them to arbitrate the dispute between the petitioner and the union.

After about three months time and no arrangements being made to arbitrate the dispute, petitioner complained to the National Labor Relations Board in 1969 that the union was discriminating in its hiring hall practices. Within about two weeks time, the Union called the petitioner and told him he would be put on the Group 1 list and a job was available. Whereupon, petitioner withdrew his complaint in August 1969 against the union and so advised the National Labor Relations Board and the American Merchant Marine Institute.

Petitioner filed an unfair labor practice complaint against the union on December 17, 1969, because the union still refused to reinstate him as a member, even though a year had elapsed and petitioner told the Secretary-Treasurer Mr. Smith that hundreds of seamen had been reinstated into their jobs and union membership under the *Parker v. Lester* decision 227 F. 2 708 (1955), without paying any fees except in some cases a small amount to keep their pension credits up to date.

On May 28, 1971, petitioner was given a letter on board the SS Green Ridge by an official of the union which demanded a

payment of an initiation fee of $2,000 dollars and all arrears in dues and fines, and in the event this was not paid, then the union would demand that the company discharge the petitioner (Appendix E, letter dated January 13, 1971).

On the same date the Captain of the Green Ridge handed petitioner a letter which said that the company would require a clearance slip from the union before it would rehire the petitioner (Appendix F, letter dated May 28, 1971).

Petitioner sued the union in New York State Supreme Court (*Peltzman v. American Radio Association*, 327 N.Y.S. 2d 505) sometime in July 1971, seeking reinstatement in the union, credit for pension from 1943 to 1949 and a writ of mandamus reinstating him to his permanent job as a Radio Officer on board the SS Green Ridge, the ship petitioner had sailed on for nine months and which he had left pursuant to union regulations, for a vacation of one trip off, on May 28, 1971. This suit is still being adjudicated as of this date, April 20, 1972 (Appendix G).

On or about September 7, 1971 the SS Green Ridge sailed without the petitioner because the union had refused him a clearance assignment after his vacation of one trip off and had sent to the company a union member to replace petitioner.

On September 14th the petitioner filed an unfair labor practice complaint (Appendixes I and J) against the union and the company, charging that the union had

caused his discharge from the SS Green Ridge, and that the company had acquiesed in that demand of the union to have petitioner replaced from his permanent job aboard the SS Green Ridge.

Also that same day petitioner filed a complaint with the National Labor Relations Board that the union sometime in June, 1971 had refused to register petitioner in the Radio School of the union, the excuse given him was that he had to start the school's classes in a beginners class and those classes were not available until the following year. Petitioner had asked to be registered in a Radar Class.

Those are the complaints that the General Counsel refused to issue when petitioner's appeals were denied (Appendixes I & J), and the cases closed. He filed a petition on January 27, 1972 with the Second Circuit Court of Appeals (Appendixes M and N, letter of Nov. 15, 1971) for a review of those decisions, which were denied on April 4, 1972. Rehearing was denied on April 24, 1972.

Petitioner alleges he was illegally expelled from the union, for non-payment of dues, because he had an inactive assignment slip when he was expelled. The date of the alleged expulsion was only 17 days after he received this inactive status assignment slip in March 17, 1950. Petitioner was never notified of this alleged expulsion until Mr. Altman of N.L.R.B. informed him of this date, and petitioner then asked who had testified as to the date, and if any documentary evidence was in the record.

Mr. Altman then replied that the records were confidential. It is petitioner's contention that this alleged date was in fact based on the inactive status slip which petitioner had supplied the N.L.R.B. when he made his charge of unfair labor practices, and the union then fixed his expulsion date as soon thereafter as possible, because they realized, after also noting that petitioner had stopped paying dues in May 1949 (Appendix K), that nine months had elapsed, and the union's rule was that a member who was in arrears for six months, was automatically expelled from the union. So this petitioner actually received an inactive assignment status slip three months after being automatically expelled from the union (Appendix L).

Petitioner asserts that since the union had never informed him that he had been expelled in 1950, for non-payment of dues, and petitioner considered the inactive status assignment slip a de facto withdrawal card, his alleged expulsion in 1950, was legally null and void, because of lack of procedural due process. Also that since his withdrawal from the union was involuntary (due to U.S. Coast Guard illegal denial of a Radio Officer's License in 1949). He was still a member under the definition of a member in 29 U.S.C.A. Sec. 412, 29 U.S.C. A. Sec. 402:

> "Member or members in good standing when used in reference to a labor organization, includes any person who has fulfilled the requirements for membership in such organization and who neither has voluntarily withdrawn from membership, nor has

been expelled from membership after appropriate proceedings of the constitution and by laws of such organization."

REASONS FOR GRANTING THE WRIT

1. The petition should be granted because the United States Circuit Court of Appeals for the Second Circuit has decided an important question of Federal Law - namely, dismissing for lack of jurisdiction an appeal from an administrative agency, without the benefit of the record before it, only the conclusions of the agency, which conclusion was not based on cross examination of witnesses by opposing parties or a hearing. Petitioner's request to adduce additional evidence and also his motion to have the Board produce the record for review were also denied, depriving him of due process and equal treatment under the U.S. Constitution's 5th and 14th Amendments, and other unspecified rights under the 9th Amendment.

Further, the decision of this Federal question is in conflict with the Circuit Court of Appeals for App. D.C. In *Retail Clerk's Union, etc. v. NLRB*, (1965) 121 App. D.C. 140, 348 F. 2d 369, the Court held that:

> "Standing to appeal on administrative order as a person aggreived, under 29 U.S.C. Sec. 160(f) arises if there is in fact an adverse effect upon the party in question, the

Court pointing out that such standing does not require an injury cognizable at law or equity."

In *International Union, etc. v. Scofield* (1965), 382 W.S. 205, 15 L.ed.2d 272, 86 S. Ct. 373, this Court held that:

> "When the Board enters a final order against the charged party, it is clear that such a party is a person, aggrieved under Sec. 10(f) of the National Labor Relations Act, 29 U.S.C. Sec. 160(f), and is therefore enabled to seek review in the appropriate Court of Appeals,"

the Court said, alternately pointing out that if the Board determines that a complaint should be dismissed, the charging party has a statutory right to review as the person aggrieved.

In *NLRB v Brown*, 380 U.S. 278, 13 L. 3d. 2d 839, 85 S. Ct. 980.

Sylabus 16 -

> "Even where the National Labor Relations Board is sustained, its analysis in support of its conclusion is subject to full, independent judicial review."

Sylabus 17 -

> "Although Courts should be slow to overturn an administrative decision, they are not left to sheer acceptance of the National Labor Relations Board's conclusions."

Sylabus 18 -

"Judicial review of administrative decisions deemed inconsistent with a statutory mandate or with the Congressional policy underlying a statute are not only properly within the judicial province, but courts would abdicate their responsibility if they did not review such administrative decisions."

Sylabus 20 -

"Where review of an administrative decision is not a question of fact, but of a judgment as to the proper balance to be struck between conflicting interests, the deference owed to an expert tribunal cannot be allowed to slip into a judicial inertia which results in the unauthorized assumption by an agency of major policy decisions properly made by Congress."

Sylabus 21 -

"Courts must set aside National Labor Relations Board decisions which rest on an erroneous legal foundation."

In *Barlow v. Collins*, 397 U.S. 159, 25 L.ed. 2d 192, 90 S. Ct. 832.

Sylabus 5 -

"In determining whether agency action is reviewable, the United States

Supreme Court must decide if Congress has in express or implied terms precluded judicial review or committed the challenged action entirely to administrative discretion."

Sylabus 6 -

"With regard to judicial review of agency action, the role of the courts should be viewed hospitably where the question sought to be reviewed does not significantly engage the agency's expertise, where the only or principal dispute relates to the meaning of a statutory term, the controversy presents issues on which courts and not administrators, are relatively more expert."

Sylabus 10 -

"The right of judicial review of administrative action is ordinarily inferred where Congressional intent to protect the interests of the Class of which the plaintiff is a member can be found; in such cases, unless members of the protected class may have judicial review the statutory objective might not be realized."

See 1 ALR Fed. Labor Order - "Person Aggrieved," p. 551.

Synopsis - One is an aggrieved person under Sec. 10(f) if the NLRB order has an adverse effect on him, whether or not his injury is cognizable at law or in equity, a party is an aggrieved person where he is

one against whom the NLRB enters a final order, or he is the charging party under a complaint dismissed by the NLRB.

Either the party charging a violation of the National Labor Relations Act, or the party against whom the charge is made, may be a person aggrieved under Sec. 10(f) of the National Labor Relations Act, 29 U.S.C. Sec. 160(f), depending upon what action is taken by the Board concerning the complaint and its effect upon such party.

In the Matter of the Petition of the NLRB for a writ of prohibition and for a writ of mandamus, 304 W.S. 486-501 (1938), the dissenting opinion of Mr. Justice Butler pointed out at page 497:

> "Precisely, the question is whether, on the facts here disclosed, the Court was without power to consider and decide upon the Corporation's application for an order directing the Board to certify and file a transcript of the record and restraining in the meantime any other action by it. The decision just announced answers affirmatively, and that is the basis on which the Court commands vacation of the order of the lower court and prohibits it from reviewing the order of the Board without first giving it a reasonable apportunity to vacate its order; that is, without giving the Board more time to proceed under Sec. 10(d). Obviously, jurisdiction of the Circuit Court of

Appeals attached upon the filing of the corporation's petition for review and service of a copy on the Board. Any other construction of Sec. 10(f) would let the Board by refusing to certify a transcript of proceedings before it, prevent judicial review of its orders. Congress did not so intend. While the statute expressly requires the person aggrieved to file a certified transcript, it implicitly, but not less plainly, commands the Board to certify the Record. This Court's decision rests on the statement that, as the term is to be applied in this instance, jurisdiction is the power to hear and determine the controversy presented in a given set of circumstances. If the lower Court had jurisdiction to entertain and decide the corporation's motion, writs of mandamus and prohibition may not be granted, for they are not available for correction of mere error or even abuse of discretion."

Interstate Commerce Commission v. New York, N.H. and H.R. Co., 287 U.S. 178, 203, 204, 77 L.ed.248, 259, 260, 53 S. Ct. 106; ex parte *Whitney*, 13 Pet. 404, 408, 10 L.ed., 221, 223; Ex parte *Taylor*, 14 How. 3, 13, 14 L.ed.302, 306, Ex parte *Denver & R.G.R. Co.*, 101 U.S. 711, 720, 25 L.ed.872, 875, *Re Hawkins*, 147 U.S. 486, 490, 37 L.ed.251, 252, 13 S. Ct. 512; *Re Atlantic City R. Co.*, 164 U.S. 633, 635, 41 L.ed.579, 580, 17 S. Ct. 208; *Re Pollitz*, 206 W.S. 323, 331, 51 L.ed.1081, 1083, 27 S. Ct. 729. Cf. Ex parte *Simons*, 247 U.S. 231, 240, 62 L.ed. 1094, 1096, 38 S. Ct. 497.

2. The decision is also probably in conflict with applicable decisions of Your Honorable Court in *Universal Camera Corp. v. NLRB*, 340 W.S. 47, 41, which is quoted in *Administrative Law*, University Case Book Series, by Gelhorn and Bok, on page 349, where Justice Frankfurter said ....

> "It would be mischievous word-playing, to find that the scope of review under the Taft-Hartley Act is any different from that under the Administrative Procedure Act. The Senate Committee which reported the review clause of the Taft-Hartley Act expressly indicated that the two standards were to conform in this regard, and the wording of the two Acts is for purposes of judicial administration indentical, and so we hold that the standard of proof specifically required of the Labor Board by the Taft-Hartley Act is the same as that to be exacted by Courts reviewing every administrative action subject to the Administrative Procedure Act."
>
> On page 351 (*supra*) Reviewing Courts must be influenced by a feeling that they are not to abdicate the conventional judicial function. Congress has imposed on them responsibility for assuring that the Board keeps within reasonable grounds. That responsibility is not less real because it is limited to enforcing the requirements that evidence appear substantial when reviewed, on the record as a

> whole, by courts invested with the authority and enjoying the prestige of the Courts of Appeal. The Board's findings are entitled to respect, but they must nonetheless be set aside when the record before a Court of Appeals clearly precludes the Board's decision from being justified by a fair estimate of the worth of the testimony of witnesses, or its informed judgment on matters within its special competence or both."

3. Petitioner argues that Title 46 U.S.C. 599, 41 Stat. 1006, Sec. 10(a), which the Court had before it in the petitioner's reply pleading to support petition for review and cross motion to produce record for review, which law petitioner found after he had filed peition for review and this law specifically says ....

> "If any person shall demand or receive either directly or indirectly, from any seaman or other person seeking employment, as seaman, or from any person on his behalf, any renumeration whatever for providing him with employment, he shall for every such offense be deemed guilty of a misdemeanor and shall be imprisoned not more than six months or fined not more than $500."

If this statute is to be considered in relation to the Taft-Hartley Act, or any other Act, then the Board had the duty to undertake the accomodation of one statutory scheme of Congress to another without

excessive emphasis upon its own immediate task (*Southern Steamship Company, Petitioner v. National Labor Relations Board and National Maritime Union of America*, 316 U.S. 31-51 (1941).

> "The Maritime Law, when in conflict with the National Labor Relations Act, is supreme." (*Peninsular & O. S.S. Co. v. National Labor Relations Bd.*, CCA 5th, 98 F. 2d 411; *Texas Co. v. N.L.R.B.*, CCA 9th, 2d F. 2186.

Seaman's tenure and relationship to his ship and employer are not terminated by the mere expiration of articles, *National Labor Relations Bd. v. Waterman S.S. Corp.*, 309 U.S. 206, 218, 84 L. ed. 704, 711, 60 S. Ct. 493. *South Atlantic SS Co. v. National Labor Relations Bd.*, CCA 5th, 116 F. 2d 480, writ of centiorari denied in 313 U.S. 582, 85 L. ed. 1538, 615 Ct. 1101.

4. The National Labor Relations Board disregarded the intent of Congress as exemplified in Congressional Statutes protecting seamen, when it ruled that the Company had refused to rehire petitioner because of petitioner's refusal to pay the fees, pursuant to a valid union security clause between the company and the union, since Congress in Title 46 U.S.C. 599 41 Stat. 1006 Sec. 10(a) prohibits anyone from demanding money from a seaman for providing him with employment; and Title 46 U.S.C.A. Sec. 564, et seq. makes it mandatory for the Shipping Co. to make an individual contract with a seaman every time they sign new shipping articles after every foreign voyage (*Peninsular & O.S.S.*

Co. v. UNLRB, C.C.A. 5th, 98 F. 2, 411, 4, 151).

In *Hamilton v. U.S.*, 268 F. 151 cert. den. 254 U.S. 645 ....Both as "wards of the Admiralty" under the general maritime law and by special acts of Congress, applying only to them, seamen enjoy many benefits not accorded to land workers. At the same time they must assume certain correlative duties not necessary to land occupations.

In *Brown v. National Union of Marine Cooks and Stewards*, reported in Court decisions - N.L.R.A. Vol. VII, p. 1070 (104 F. Supp. 685, d.e. cal.). The N.L.R.B. regional director instituted an action for injunctive relief under Sec. 10 (J) of the Labor Management Relations Act, 1947. As a result men who were screened off by the Coast Guard and other seamen who had optioned to join a rival union were reinstated to their jobs, notwithstanding the union's refusal to give these men assignment slips to these jobs. Answering the defense of the employer that the Contract provision obligated them to accept only men assigned to them by the union, Judge Lemmon decided that the employer may not take shelter under the contract if there be a showing of unfair practice, since it is the statute and not the contract which is the measure of duty, and the liability. (Appendix K, letter of September 1, 1971 from Central Gulf S.S. Co.).

In *Radio Officers Union of the Commercial Telegraphers Union, A.F.L. v. National Labor Relations Board*, 347 W.S. 17, 98 L.ed.455, 74 S. Ct. 323, 41 A.L.R. 2d 621,

the provisions of the National Labor Relations Act by which it is an unfair labor practice for an employer to discriminate against employees to encourage or discourage membership in any labor organization (29 U.S.C. Sec. 158(a)(3), or for a union to cause or attempt to cause an employer to practice such discrimination (29 U.S.C. Sec. 158(b)(2), were designed to allow employees to freely exercise their right to join unions, be good, bad, or indifferent members or abstain from joining any union without imperiling their livlihood.

See Am. Jur. Labor Sec. 148, 149.

Sylabus 16 -

"In determining whether an employer is guilty of an unfair labor practice under Sec. 8(a) (3) of the Amended National Labor Relations Act (29 U.S.C. Sec. 158(a) (3) as a result of having discriminated against employees to encourage or discourage membership in a labor organization, the motivation of the employer in practicing the particular discrimination complained of is a relevant factor." (See Am. Jur. Labor, Sec. 148).

Sylabus 18 -

"At common law a man is held to intend the forseeable consequences of his conduct." (See Am. Jur. Evidence, Sec. 232).

A system of hiring which requires recourse only to a union for assignment to employment and restricts assignment to union members in good standing encourages membership in a labor organization. See *Red Star Express Lines v. N.L.R.B.*, C.A. 2d 196 F. 2d 78 (41 A.L.R. 2d 629).

Petitioner refers to Sec. 10(e) of A.P.A., and alleges that the NLRB action in dismissing the complaints are:

A. Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

B. Contrary to constitutional right, power, privilege, or immunity;

C. In excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

D. Without observance of procedure required by law;

E. Unsupported by substantial evidence in a case subject to Section 556 & 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute.

Petitioner wishes to show by the citations of the following cases involving the American Radio Association, before the Board, that the previous decisions entered therein have not stopped the A.R.A. from continuing its unfair labor practices, and the illegal contract signed in 1949 still has the same clauses in it that was declared illegal in 1949, and therefore the contract

is still invalid because in effect and actual practice it is a closed shop practice, clearly illegal under the Taft-Hartley Act; but semantically called a union security clause in the contract. The hiring hall procedures are still discriminatory vis a vis non members, permit card members, and the employer has to apply to the union for manning his ships and has no right to hire or rehire anyone without a "clearance" assignment from the union.

1. In the *Matter of American Radio Association Affiliated with the Congress of Industrial Organization & Carl W. Lundquist & William Steinberg*, case No. 2-CB-88, decided April 19, 1949, 82 NLRB 1344, No. 151 -

Relating to a "closed shop" agreement and to a strike by the A.R.A. to force employers to sign such an agreement.

Decree consented to by American Radio Association in Docket No. 217 91 ([redacted]) U.S. Ct. of Appeals 2nd Circuit, Dec. 28, 1950.

2. A decree filed by *NLRB against A.R.A.*, Docket No. 24737 ([redacted]). Decree filed July 16, 1957.

The record in this case is not available in the published volumes of this Court. Enquiry to the New York Office and Washington Office of the NLRB, has to this date, May 8, 1972, been not forthcoming, so petitioner has no idea what this case is about.

3. *In the matter of Pacific Maritime Association, successor in interest to Pacific American Shipowners & Its member companies and Radio Officers Union Marine Division, Commercial Telegraphers Union AFL-CIO.* Case No. 20-CA- 166 - Decided April 28, 1950.89 NLRB No. 115.

In this case the American Radio Association intervened. Board ruled that contract signed after a strike contained illegal hiring hall procedures and closed-shop agreement.

4. *American Radio Association (Pacific Maritime Assoc.) Jack Hajim.* Case No. 20-CB-395 April 9, 1957, 117 NLRB No. 151.

Trial examiner ruled union was engaging in unfair labor practices, but the Board ruled to dismiss the complaint because it was filed six months after the illegal unfair practices were committed. (Note contains Senator Taft's statement about discriminatory hiring halls.)

5. *NLRB v. Alaska SS Co., et al (ARA),* 221 F2 357, Feb. 26, 1954.

Petition for enforcement for illegally participating in hiring arrangement for preferential treatment to union members. (Granted.)

6. *NLRB v. Alaska SS Co., et al. (American Radio Association),* 245 F2 282, May 22, 1957.

Enfocement of back pay order. (Granted.)

CONCLUSION

Petitioner therefore submits that the Second Circuit Court of Appeals erred in its dismissal of petitioner's petition for review, his motions to adduce additional evidence and for production of the record, and that the petitioner's prayer for a writ of certiorari should be granted.

Respectfully submitted,

ARCHIE PELTZMAN
8725 16th Avenue
Brooklyn, New York 11214
Petitioner Pro Se

APPENDIX A

U.S. Court of Appeals Order
Dated April 4, 1972 Granting
NLRB Motion To Dismiss
Petition for Review

UNITED STATES COURT OF APPEALS

Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the fourth day of April, one thousand nine hundred and seventy-two.

ARCHIE PELTZMAN,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

BEFORE:

HON. TOM C. CLARK, Justice

HON. J. EDWARD LUMBARD)
HON. IRVING R. KAUFMAN) Circuit Judges

APPENDIX A

U.S. Court of Appeals Order
Dated April 4, 1972 Granting
NLRB Motion to Dismiss
Petition for Review

It is hereby ordered that the motion made herein by counsel for the respondent by notice of motion dated March 13, 1972, to dismiss the petition for review for lack of jurisdiction be and it hereby is granted.

s/ ADF

A. DANIEL FUSARO,
Clerk

APPENDIX A

APPENDIX B

U.S. Court of Appeals Order
Dated April 4, 1972 Denying
Motion of Petitioner to
Produce Record for Review

UNITED STATES COURT OF APPEALS

Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the fourth day of April, one thousand nine hundred and seventy-two.

ARCHIE PELTZMAN,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

BEFORE:

HON. TOM C. CLARK, Justice

HON. J. EDWARD LUMBARD)
HON. IRVING R. KAUFMAN) Circuit Judges

APPENDIX B

U.S. Court of Appeals Order
Dated April 4, 1972 Denying
Motion of Petitioner to
Produce Record for Review

APPENDIX B

U.S. Court of Appeals Order
Dated April 4, 1972 Denying
Motion of Petitioner to
Produce Record for Review

It is hereby ordered that the motion made herein by counsel for the petitioner by notice of motion dated March 20, 1972, to direct respondent to produce the record for review be and it hereby is denied.

s/ADF

A. DANIEL FUSARO, Clerk

APPENDIX C

U.S. Court of Appeals Order Dated April 4, 1972 Denying Motion of Petitioner for Leave to Adduce Additional Evidence

UNITED STATES COURT OF APPEALS

Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the fourth day of April, one thousand nine hundred and seventy-two.

ARCHIE PELTZMAN,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

BEFORE:

HON. TOM C. CLARK, Justice

HON. J. EDWARD LUMBARD, HON. IRVING R. KAUFMAN } Circuit Judges

APPENDIX C

U.S. Court of Appeals Order Dated April 4, 1972 Denying Motion of Petitioner for Leave to Adduce Additional Evidence

It is hereby ordered that the motion made herein by counsel for the petitioner by notice of motion dated March 13, 1972 for leave to adduce additional evidence be and it hereby is denied.

s/ADF

A. DANIEL FUSARO, Clerk

APPENDIX D

U.S. Court of Appeals Order Dated April 24, 1972 Denying Petitioner's Motion for a Rehearing

UNITED STATES COURT OF APPEALS

Second Circuit

ARCHIE PELTZMAN,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

A petition for a rehearing having been filed herein by petitioner, pro se,

Upon consideration thereof, it is

Ordered that said petition be and it hereby is denied.

Dated: April 24, 1972

s/J. Edward Lumbard

s/Irving R. Kaufman

Circuit Judges

APPENDIX E

Letter Dated January 13, 1971
From American Radio Association

Affiliated with the American Federation of Labor and Congress of Industrial Organizations

AMERICAN RADIO ASSOCIATION

270 Madison Avenue · New York, N.Y. 10016 ·
MUrray Hill 9-5754 · Cable Address:
ARADIOCIO NEW YORK

January 13, 1971

Mr. Archie Peltzman
185 Wortman Avenue
Brooklyn, N. Y. 11207

Dear Sir:

Please be advised that pursuant to Section 4 (b) of the Collective Bargaining Agreement entered into between the American Radio Association, AFL-CIO and the Central Gulf Steamship Co., you are required as a condition of employment to become a member in good standing of this Organization.

Accordingly, within thirty (30) days from the date hereof, you are required to tender the sum of Two Thousand Dollars ($2,000.00), (together with arrears of all dues and fees, if any) as the initiation fee required for acquiring Union Membership.

APPENDIX E

Letter Dated January 13, 1971
From American Radio Association

If such payment is not made, we shall have no alternative than to request your immediate discharge by the Company.

Very truly yours,

s/Bernard L. Smith
Bernard L. Smith
Secretary-Treasurer

BLS:LB

Via REGISTERED R.R.R.

cc: SS GREEN RIDGE, c/o Wilmington Shipping Co., P.O. Box 1809, Wilmington, N.C. 28401 (AIR MAIL, REG.R.R.R.)

cc: Central Gulf S.S. Co., New Orleans, La.

SAN FRANCISCO BALTIMORE NEW ORLEANS SEATLE

HOUSTON

APPENDIX F

Letter from Central Gulf S.S. Co.
Dated May 28, 1971

CENTRAL GULF STEAMSHIP CORPORATION

Telephone 529-5461
Telex 050-7435
TWX 810-951-6044

Cable Address
Centraship

International Trade Mart -
P.C. Box 53365
No. 2 Canal Street
New Orleans, La. U.S.A. 70150

S.S. Green Ridge
New York, N.Y.
May 28, 1971

Mr. Archie Peltzman
Radio Officer

Dear Mr. Peltzman:

In accordance with your request I have ordered a replacement. Please be advised that you will not be able to rejoin the vessel without proper clearance from the Union.

Yours truly,

s/W.C. Kenopke
W.C. KENOPKE, MASTER
S.S. GREEN RIDGE

APPENDIX G

Order of New York Supreme Court, Special Term, Dated April 20, 1972, Denying Motion

SUPREME COURT OF THE STATE OF NEW YORK
SPECIAL TERM, PART 1
COUNTY OF NEW YORK

ARCHIE PELTZMAN,

Plaintiff

-against-

AMERICAN RADIO ASSOCIATION, etc.,

Defendant

Index No.

Calendar No.

ORDER

Present:

Hon. Max Bloom
Justice.

The following papers numbered 1 to 9 used on this motion, submitted and referred this 13th day of April, 1972.
Calendar No._____

	Papers Numbered
Notice of Motion and Affidavits Annexed - exhibits	1-5
Order to Show Cause, Answering Affidavits and exhibit	6-7
Replying Affidavits and exhibit	8-9

APPENDIX G

Order of New York Supreme Court, Special Term, Dated April 20, 1972, Denying Motion

By order dated January 20, 1972, plaintiff's motion for a mandatory injunction was denied and defendant's motion to dismiss the complaint was granted (see opinion 327 N.Y.S., 2d 505). A motion for leave to reargue was thereafter denied. Plaintiff now moves for leave to rehear and renew (Riggs v. Pursell, 74 N.Y. 370), allegedly upon the basis of "new facts". All that is now advanced is the claim that "46 U.S.C.A. §599 bars the acts sought by the complaint to be restrained. A mere glance at the statute makes it at once apparent that it is utterly without application to the situation here presented. There is, therefore, no warrant for renewal or rehearing of the original determination. Accordingly, the motion is denied.

Dated, April 20, 1972

APPENDIX H

Letter from Central Gulf S.S. Co.
Dated September 11, 1971

CENTRAL GULF STEAMSHIP CORPORATION

Telephone 529-5461
Telex 058-7435
TWX 810-951-6044

Cable Address
Centraship

International Trade Mart
No. 2 Canal Street
New Orleans, La., U.S.A.
70130

September 1, 1971

Mr. Archie Peltzman
8725 16th Avenue
Brooklyn, New York 11214

Dear Mr. Peltzman:

This is in reply to your letter of August 17, 1971 requesting correspondence between this office and the A.R.A. in connection with your removal by the Union, from our SS Green Ridge.

We have never corresponded with the Union concerning your case. The New Orleans A.R.A. agent telephoned the writer to ascertain the itinerary of the vessel, a few days prior her arrival Bayonne.

After the vessel arrived Bayonne, A.R.A., New York informed the writer telephonically that you would have to be replaced until some details of your standing with the Union were resolved.

. Letter from Central Gulf S.S. Co.
Dated September 11, 1971

As it was clearly a parochial problem the writer did not inquire of reasons and circumstances surrounding the case, but to avoid our becoming involved in a breach of contract with A.R.A., the Master was instructed not to sign you on until you produced a clearance from the Union

Due to our not having any correspondence with the A.R.A., we were under the erroneous impression a relief man had been assigned to the Green Ridge while your differences with the Union were being resolved, thus the reason for our routine wire notice to rejoin.

As you no doubt know, our contract with the A.R.A. prohibits our selecting or employing Radio Officers, they are assigned by the A.R.A. in accordance with their shipping rules.

Yours very truly,
CENTRAL GULF STEAMSHIP CORPORATION

s/C.E. Whitcomb

Captain C.E. Whitcomb
Manager Marine Personnel

CEW:dh
cc: Mr. G. A. Atkinson, N.Y.

APPENDIX I & J

Unfair Labor Charges Filed by
Petitioner Dated September 14, 1971

(REPRODUCED HEREIN AT

PAGE 16a.)

FORM NLRB 508 (10-68)

Form Approved
Budget Bureau No. 64-R003.12

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

INSTRUCTIONS: File an original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No.

Date Filed

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name	b. Union Representative to Contact	c. Phone No.
AMERICAN RADIO ASSOCIATION	Mr. Bernard L. Smith	MU 9-5754

d. Address (Street, city, State and ZIP code)

270 Madison Avenue, New York, New York 10016

e. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) (1) (A) and (2) (List Subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

On or about September 7, 1971 the above-named labor organization refused to give Archie Paltzman clearance papers from its hiring hall to resume his job with Central Gulf Steamship Corporation, because he was not a member of said Union.

On or about June 2, 1971, the above-named labor organization refused to permit Archie Paltzman to enroll in the industry radio school because of his lack of membership in said Union.

By these and other acts the above named Union has interfered with, restrained and coerced employees in the industry in the exercise of rights guaranteed in Section 7 of the Act.

3. Name of Employer

CENTRAL GULF STEAMSHIP CORPORATION

4. Location of Plant Involved (Street, city, State and ZIP code)

1 Whitehall Street, New York, New York 10016

5. Type of Establishment (Factory, mine, wholesale, etc.)	6. Identify Principal Product or Service	7. No. of Workers Employed
Shipping	Shipping by vessel	42

8. Full Name of Party Filing Charge

Archie Paltzman

9. Address of Party Filing Charge (Street, city, State and ZIP code)

8725 16th Avenue, Brooklyn, New York 11214

10. Telephone No.

CL 9-1218

11. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/Archie Paltzman (Signature of representative or person making charge) — an individual (Title or office, if any)

Archie Paltzman

Address 8725 16th Avenue, Brooklyn, New York 11214 — CL 9-1218 (Telephone number) — September 14, 1971 (Date)

Form NLRB-501
(2-69)

Form Approved
Budget Bureau No. 64-R021.33

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No.

Date Filed

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer: CENTRAL GULF STEAMSHIP CORPORATION

b. Number of Workers Employed: 42

c. Address of Establishment (Street and number, city, State, and ZIP code): 1 Whitehall Street, New York, New York

d. Employer Representative to Contact: Mr. Atkinson

e. Phone No.: WH 4-8250

f. Type of Establishment (Factory, mine, wholesaler, etc.): Shipping

g. Identify Principal Product or Service: Shipping by vessel

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (3) (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

On or about September 7, 1971, the above-named Employer discharged Archie Paltzman because he was not a member of American Radio Association.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number)

Archie Paltzman

4a. Address (Street and number, city, State, and ZIP code): 8725 16th Avenue, Brooklyn, New York 11214

4b. Telephone No.: CL 9-1233

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

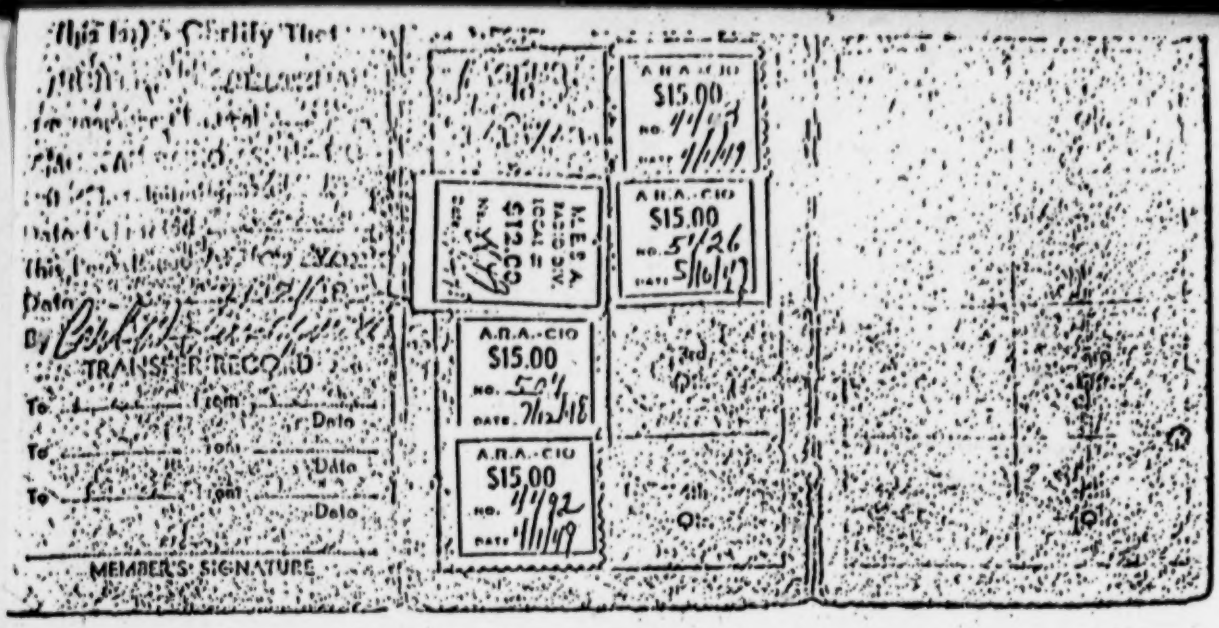
By: /s/ Archie Paltzman (Signature of representative or person filing charge) — an individual (Title, if any)

Address: Archie Paltzman, 8725 16th Avenue, Brooklyn, New York 11214 — CL 9-1238 (Telephone number) — September 14, 1971 (Date)

APPENDIX K

Membership Book and Dues Record of Petitioner

(REPRODUCED HEREIN AT PAGE 18a.)



NATIONAL BOOK No. [illegible]

This is to certify that—

Archie L. Baltzman

(NAME OF MEMBER—PLEASE CLEARLY)

is a member of District Local No. V

AMERICAN COMMUNICATIONS ASSOCIATION, C.I.O.

Union Dispatcher

Archie L. Baltzman

(MEMBER'S SIGNATURE)

Note—This book is void unless signed by member and Local Secretary.

William J. [illegible]

(SIGNATURE OF SECRETARY-TREASURER of Local to which member belongs)

LOCAL MEMBERSHIP BOOK No. .....

Date member first initiated ..... Y., 19 YY

Date member reinstated if membership not continuous ....., 19....

Date and place at which this book was issued ..... 5/26, 19 YY

..... NYC (CITY) .....

This book issued by

O. Mantel

(SIGNATURE OF ISSUING OFFICER OR DELEGATE)

This Membership Book issued by the International Office of the American Communications Association, C.I.O. 5 Beekman Street, New York 7, N. Y.

412

Joseph P. Selly
President

APPENDIX L

Inactive Assignment Slip Dated March 17, 1950

ORIGINAL
(To be Retained by Member)

OFFICIAL ASSIGNMENT

Port of New York Date 3/17/50

Name Arabia Baltzman Book No. 284

Assigned to Boston Inactive from [illegible]

S.S. Company Rating

Perm. ☐ Temp. ☐ Relief Job ☐ Book [illegible]

Transferred to Cleared

Remarks

APPENDIX M

NLRB Letter Denying Appeal
Dated August 13, 1970

NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL

Washington, D.C. 20570 August 13, 1970

Re: American Radio Association
(Grace Lines, et al.)
Case No. 2-CB-4788

LETTERS TO PARTIES FORWARDED
VIA CERTIFIED MAIL THIS DATE

Mr. Archie Peltzman
185 Wortman Avenue
Brooklyn, New York 11207

Dear Mr. Peltzman:

Your appeal in the above matter has been duly considered.

The appeal is denied. Under all the circumstances, the burden of establishing that the American Radio Association unlawfully denied you reinstatement could not be sustained. The evidence disclosed that you had been expelled from the Association for non-payment of dues. Even assuming, without actually deciding, that you were on "inactive" status, such status did not privilege you to withhold dues and, therefore, it appeared that the Association validly expelled you, thus necessitating that you re-enter the Association as a new member. Accordingly,

APPENDIX M

NLRB Letter Denying Appeal
Dated August 13, 1970

absent any other contention on appeal, further proceedings were unwarranted.

Very truly yours,

Arnold Ordman
General Counsel

By s/Irving M. Herman
Irving M. Herman
Director, Office of Appeals

cc: Director, Region 2

American Radio Association
270 Madison Avenue
New York, New York 10016

Edwin A. Steinberg, Esquire
90 Park Avenue
New York, New York 10016

CERTIFIED MAIL

APPENDIX N

NLRB Letter Denying Appeal
Dated November 15, 1971

November 15, 1971

Re: Central Gulf Steamship Corp.
Case No. 2-CA-12445

American Radio Association
(Central Gulf Steamship Corp.)
Case No. 2-CB-5033

LETTERS TO PARTIES FORWARDED
VIA CERTIFIED MAIL THIS DATE
s/A.J.

Mr. Archie Peltzman
8725 16th Avenue
Brooklyn, New York 11214

Dear Mr. Peltzman:

Your appeal in the above matters has been duly considered.

The appeal is denied. For substantially the reasons set forth in the Regional Director's letters of October 26, 1971, and under all the circumstances, insufficient basis existed for a finding that either the Company or the Association had violated the Act in any manner encompassed by the charges. It was noted that on August 13, 1970, in sustaining the Regional Director's dismissal of your charge in Case No. 2-CB-4788, the General Counsel did not find

APPENDIX N

NLRB Letter Denying Appeal
Dated November 15, 1971

your expulsion from the Association to be violative of the Act.

Very truly yours,

Peter G. Nash
General Counsel

By s/Irving M. Herman
Irving M. Herman
Director, Office of
Appeals

cc: Director, Region 2

American Radio Association, AFL-CIO, 270 Madison Avenue, New York, New York 10016

Central Gulf Steamship Corporation, Attn: Mr. George Atkinson, Ass't. Tr. Mgr., One Whitehall Street, New York, New York 10016

Edwin A. Steinberg, Esq., 90 Park Avenue, New York, N.Y. 10016

Lorenz, Finn, Giardino & Lambos, Attn: Jacob Silverman, Esq., 21 West Street, New York, New York 10006

CERTIFIED MAIL

DEC 07 1971

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1573

ARCHIE PELTZMAN, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

1. In September 1971, petitioner filed with the National Labor Relations Board an unfair labor practice charge against the American Radio Association (the Union), alleging that it had declined, because he lacked union membership, to clear him through the hiring hall so that he could resume work for Central Gulf Steamship Corporation (the Company), and that it had discriminatorily refused to enroll him in the industry radio school. The same day, petitioner also filed a charge against the Company, alleging that it had improperly discharged him for lack of union membership (Pet. App. 16a).

469-502—72

Following an investigation, the Board's Regional Director notified petitioner that he would not issue a complaint on the charges. The refusal to clear petitioner was permissible, he stated, since petitioner had failed to pay the initiation fee which the Union was entitled to collect pursuant to a valid union security agreement with the Company; the denial of enrollment in the radio school was not due to petitioner's nonmembership in the Union, as claimed, but was based solely on the fact that petitioner lacked the qualifications for admission (see Appendix A, *infra*, pp. 5–6); and the Company's refusal to rehire petitioner was not unlawful, again because of his refusal to pay the initiation fee required by the valid union security agreement (see Appendix B, *infra*, pp. 8–9). Petitioner appealed the decision to the General Counsel of the Board, who sustained the Director (Pet. App. 22a–23a).[1]

Petitioner then filed a petition in the United States Court of Appeals for the Second Circuit, to review the General Counsel's refusal to issue an unfair labor practice complaint. The Board moved to dismiss the petition on the ground that the General Counsel's action is not a final order within the meaning of Section 10(f) of the Act, 29 U.S.C. 160(f).[2] The court of

[1] The General Counsel noted that he had a year earlier determined that petitioner had been lawfully expelled from the Union for nonpayment of dues, and thus that the Union did not violate the Act by requiring him to apply for membership as a new member (Pet. App. 22a–23a, 20a–21a).

[2] Section 10(f) provides that: "Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain review of such order" in the appropriate court of appeals.

appeals granted the motion, and dismissed the petition (Pet. App. 1a–2a).[3]

2. The decision of the court of appeals is correct. Under Section 10(f) of the Act, a court of appeals has jurisdiction to review only a "final order of the Board." It is well settled that the action of the General Counsel in refusing to issue a complaint—as was the case here—is not a "final order of the Board," within the meaning of Section 10(f). See, *e.g.*, *Lincourt* v. *National Labor Relations Board*, 170 F.2d 306 (C.A. 1); *Manhattan Construction Co.* v. *National Labor Relations Board*, 198 F.2d 320, 321–322 (C.A. 10); *Anthony* v. *National Labor Relations Board*, 204 F.2d 832, 833 (C.A. 6); *Contractors Ass'n of Philadelphia and Eastern Pennsylvania* v. *National Labor Relations Board*, 295 F.2d 526 (C.A. 3), certiorari denied, 369 U.S. 813.[4] See also *Hamlet* v. *National*

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[3] The court also denied petitioner's motion for leave to adduce additional evidence and his cross-motion to produce the record for review (Pet. App. 3a–4a, 5a–6a).

[4] Petitioner's claim (Pet. 11) that the court of appeals decided the case without the benefit of the "record" is not well taken. In determining the threshhold question of jurisdiction under Section 10(f), the only "record" needed for proper resolution of the issue is the administrative rulings of the Regional Director and the General Counsel. These were before the court. Until the General Counsel exercises his discretionary authority to issue a complaint, the formal hearing requirements of Section 10(b) of the Act, 29 U.S.C. 160(b), are not applicable.

Petitioner's reliance on 46 U.S.C. 599, as precluding the Company from refusing to rehire him for nonpayment of the initiation fee, is misplaced. The criminal statute to which petitioner refers (Pet. 18–19) is not applicable to union security clauses, which are expressly sanctioned by the proviso to Section 8(a)(3) of the Act, 29 U.S.C. 158(a)(3).

Labor Relations Board, No. 71–1131, certiorari denied, May 15, 1972.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

PETER G. NASH,
General Counsel,
National Labor Relations Board.

JUNE 1972.

APPENDIX A

NATIONAL LABOR RELATIONS BOARD,
REGION 2, FEDERAL BUILDING,
New York, N.Y., October 26, 1971.

Re American Radio Association (Central Gulf Steamship Corporation).
Case No. 2–CB–5033.

Mr. ARCHIE PELTZMAN,
8725 16th Avenue,
Brooklyn, N.Y.

DEAR SIR: Your charge in the above-entitled case alleging a violation under section 8 of the National Labor Relations Act, as amended, has been carefully investigated and considered.

As a result of the investigation, it does not appear that further proceedings on the charge are warranted.

The evidence does not tend to establish that the above-named Union violated the National Labor Relations Act. The evidence establishes that pursuant to a valid Union security agreement you were obligated to pay an initiation fee to the Union which you refused to do after notification by the Union that such fees were due. Under such circumstances the refusal by the Union to refer you to your former permanent position aboard the S.S. Green Ridge was permissible.

Insofar as the charge alleges that you were not enrolled in the industry school because of your lack of membership in the Union, the evidence does not support such claims, inasmuch as you did not qualify for admission to the course for which you sought enrollment and admission to the school is not limited to

Union members. I therefore am refusing to issue a complaint in this matter.

Pursuant to the National Labor Relations Board Rules and Regulations, you may obtain a review of this action by filing an appeal with the General Counsel of the National Labor Relations Board, Washington, D.C. 20570 and a copy with me. This appeal must contain a complete statement setting forth the facts and reasons upon which it is based. The appeal must be received by the General Counsel in Washington, D.C. by the close of business on November 9, 1971. Upon good cause shown, however, the General Counsel may grant special permission for the longer period within which to file. A copy of any such request for extension of time should be submitted to me.

If you file an appeal, please complete the notice forms I have enclosed with this letter and send one copy of the form to each of the other parties. Their names and addresses are listed below. The notice forms should be mailed at the same time you file the appeal, but mailing the notice forms does not relieve you of the necessity of filing the appeal itself with the General Counsel and a copy of the appeal with the Regional Director within the time stated above.

Very truly yours,

SIDNEY DANIELSON,
Acting Regional Director.

Enclosure.
Registered Mail.
R.R.R.
cc: General Counsel
National Labor Relations Board
Washington, D.C. 20570
American Radio Association, AFL–CIO
270 Madison Avenue, New York, N.Y. 10016

Central Gulf Steamship Corporation, Attn: Mr. George Atkinson, Ass't. Tr.
One Whitehall Street, New York, N.Y. 10004
Edwin A. Steinberg, Esq.
90 Park Avenue, New York, N.Y. 10016
Lorenz, Finn, Giardino & Lambos, Attn: Jacob Silverman, Esq.
21 West Street, New York, N.Y. 10006

APPENDIX B

NATIONAL LABOR RELATIONS BOARD,
REGION 2, FEDERAL BUILDING,
New York, N.Y., October 26, 1971.

Re Central Gulf Steamship Corporation.
Case No. 2–CA–12445.

Mr. ARCHIE PELTZMAN,
8725 16th Avenue,
Brooklyn, N.Y.

DEAR SIR: Your charge in the above-entitled case alleging a violation under Section 8 of the National Labor Relations Act, as amended, has been carefully investigated and considered.

As a result of the investigation, it does not appear that further proceedings on the charge are warranted.

The investigation does not tend to establish that the above-named Company violated the National Labor Relations Act as alleged by you. The evidence establishes that the Company refused to re-hire you as a crew member aboard the S.S. Green Ridge pursuant to a valid Union security provision between it and the American Radio Association, AFL–CIO, because of your failure to remit initiation fees after notification by the latter that such fees were due and not for any reason prohibited by the aforesaid Act. I therefore am refusing to issue a complaint in this matter.

Pursuant to the National Labor Relations Board Rules and Regulations, you may obtain a review of this action by filing an appeal with the General Counsel of the National Labor Relations Board, Washington, D.C. 20570 and a copy with me. This appeal must

contain a complete statement setting forth the facts and reasons upon which it is based. The appeal must be received by the General Counsel in Washington, D.C., by the close of business on November 9, 1971. Upon good cause shown, however, the General Counsel may grant special permission for a longer period within which to file. A copy of any such request for extension of time should be submitted to me.

If you file an appeal, please complete the notice forms I have enclosed with this letter and send one copy of the form to each of the other parties. Their names and addresses are listed below. The notice forms should be mailed at the same time you file the appeal, but mailing the notice forms does not relieve you of the necessity of filing the appeal itself with the General Counsel and a copy of the appeal with the Regional Director within the time stated above.

Very truly yours,

SIDNEY DANIELSON,
Acting Regional Director.

Enclosure.
Registered Mail.
R.R.R.
cc: General Counsel
National Labor Relations Board
Washington, D.C. 20570
Central Gulf Steamship Corporation
Attn: Mr. George Atkinson, Ass't. Traffic Mgr.
One Whitehall Street, New York, N.Y. 10004
Lorenz, Finn, Giardino & Lambos
Attn: Jacob Silverman, Esq.
21 West Street, New York, N.Y. 10006

U.S. GOVERNMENT PRINTING OFFICE: 1972

LE COPY

Supreme Court, U. S.
FILED
JUL 14 1972
MICHAEL RODAK, JR., CLERK

No. 71-1573

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1972

ARCHIE PELTZMAN, Petitioner

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

REPLY BRIEF FOR ARCHIE PELTZMAN IN SUPPORT OF PETITION

Archie Peltzman
8725 16th Avenue
Brooklyn, N.Y. 11214
Petitioner Pro Se

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1972

No. 71-1573 .

ARCHIE PELTZMAN, Petitioner

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF FOR ARCHIE PELTZMAN IN SUPPORT OF PETITION.

1. The Questions presented in Petitioner's main brief (Pet. 2, 3, 4), have not been rebutted by the Respondent. In their entire memorandum consisting of nine pages, there is not one mention of the United States Constitution. There is no rebuttal to the list of cases cited on (Pet. IV, V, VII), or to the specific cases against the American Radio Association (Pet. 23), and there is still no

inkling from the Respondent as to the decree filed in the 2nd Circuit Court of Appeals No. 24737 (Pet. 23), which Petitioner inquired about and to this date, July 6, 1972, has not received any information whatsoever as to what that case was all about.

2. Respondent alleges the contract signed by the union and company was a valid one, but in the decree consented to in Docket No. 21791 (Pet. 23), the Board ruled and the ~~company~~ UNION consented to the decree that the contract was an illegal one because on page 1345 of Case No. 2-CB-88 April 19, 1949 (82 NLRB No. 151), quote ...The record makes it clear that in practical operation the hiring hall clause was intended to discriminate unlawfully against non-members of the A.R.A. in regard to their hire and tenure of employment. We have held that by engaging in an actual strike to compel an employer to execute a hiring hall agreement, the respondent union violated Section 8 (b) (2)[6]. In this particular case, the Respondents threatened strike action to force the employers to accede to their adamant demand for inclusion of the discriminatory hiring hall clause as a condition for concluding any agreement. We see no substantial distinction between an actual strike by a union and a threat of strike action supported by a majority vote of union members for the purpose of deter-

mining whether a union has violated the Act by attempting to cause an employer to discriminate against non-members of the union. ... end quote. Petitioner alleges this illegal hiring hall clause is still in effect, and was used against petitioner, and in the same fashion as it was used in the case of N.L.R.B. v. Alaska SS. Co. et al. (Pet. 24), and against Jack Hajim (Pet. 24), Case No. 20-CB-395, 117 NLRB No. 151.

3. Respondent alleges that his decision not to issue a complaint was not a final order (Res. 2). However, the General Counsel denied Petitioner's appeals (Pet. App. 20a and 22a). If denying appeals and thereby closing the cases is not a final order, Petitioner does not understand what the word final means, as interpreted by the General Counsel. In this connection see 1ALR Labor Order Fed "Person Aggrieved", page 551 (Pet. 14).

Respondent alleges (Res.3) that 46 U.S.C. 599 is not applicable to union security clauses. Petitioner rebuts this argument with the Hamilton Case (Pet. 20), and the Peninsular Case (Pet. 191). Quote "The Maritime Law when in conflict with the National Labor Relations Act, is Supreme."

4. The Cases quoted by Respondent (Res. 3) are not applicable because there

is not one seaman case in the lot; see petitioner's argument (Pet. 18, 19, 20, 21, 22, 23, 24), of his main brief, supporting the argument that Congress by enacting special statutes protecting seamen in their employment, precludes their being fired from their jobs, except for cause and specifically Sec. 599 of Title 46, prohibits anyone from demanding money from a seaman for providing him with employment (Pet. 19).

5. Respondent has not rebutted petitioner's claim that he was actually on inactive status (Pet. App. 19a) three months after he was supposed to be automatically expelled from the union for non-payment of dues, and only fourteen (14) days later was allegedly expelled from the union. (Pet. 10). There has been no rebuttal of petitioner's allegation that under the definition of a member in 29 U.S.C.A. Sec. 412, 29 U.S.C.A. Sec. 402 (Pet. 10), he is still a member of the union.

6. There has been no rebuttal by Respondent that petitioner's rights under the 5th, 9th, and 14th Amendments to the Constitution have been violated. In this connection, Petitioner asserts that if he was a resident of 19 States which have specific right to work laws, he could not have been discharged from his job. Also by Executive Order all employees of the Federal Government cannot be dismissed

from their jobs because of non-union status and similarly all State and City employees are protected from being dismissed from their jobs if they are not union members.

7. Petitioner argues that equal protection of the laws demand that he, as a seaman, should have the same protection as these Federal, State, and City employees have, and also he should also be protected by the right to work laws in those nineteen States, particularly because as a seaman he has worked in Florida and Texas and North Carolina, where his ship was berthed and loaded and unloaded cargo, and these states have right to work laws, and his company, the Central Gulf S.S. Co. has agents in these states.

CONCLUSION

As set forth in Petitioner's main brief, the Second Circuit Court of Appeals erred in its dismissal of Petitioner's Petition for review, his motions to adduce additional evidence and for production of the record, and that Petitioner's prayer for a writ of certiorari should be granted.

Respectfully submitted,

ARCHIE PELTZMAN
8725 16th Avenue
Brooklyn, N.Y. 11214
Petitioner Pro Se

Dated July 6, 1972

LE COPY

Supreme Court, U.S.
FILED
OCT 26 1972
MICHAEL RODAK, JR., CLERK

No. 71-1573

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1972

ARCHIE PELTZMAN, Petitioner

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR REHEARING

Archie Peltzman
8725 16th Avenue
Brooklyn, N.Y. 11214
Petitioner Pro Se

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1972

No. 71-1573

ARCHIE PELTZMAN, Petitioner

v

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR REHEARING

Petitioner prays that this Court grant rehearing of its order of October 10, 1972 denying the petition for writ of certiorari, that a writ of certiorari issue to review the judgement of the Court Of Appeals for the Second Circuit in the above-entitled case.

Grounds For Rehearing

Petitioner wishes to argue the following substantial grounds available to him although not previously presented.

1. Petitioner argues that the Court in Goldberg v Kelly; 397 US 254, (1970) held that welfare receipient must be afforded a hearing to determine the validity of the public assistance's agency to determine benefits before actual termination occurs. Court declared following elements essential - an opportunity for the receipient to be heard in person to present oral evidence and to cross-examine adverse witnesses, the assistance of counsel in preparing for the hearing, and a statement by the official setting forth the reasons for and evidence in support of his decision to terminate the receipient's benefits.

(a) Petitioner argues that no hearing was held in his case, before

General Counsel for N.L.R.B. dismissed the complaint against the union and the employer, after both had caused petitioner to be denied reemployment to his job, after taking a vacation from the vessel upon which he had been continuously employed for nine months. (App. p. 11),I3a,)

2. The Court held in Association of Data Processing Serv. Orgs. v Comp. 397 U.S. 159 (1970) Quote "There is no presumption against judicial review and in favor of administrative absolutism".

3. Justice Brandeis' concurring opinion in St. Joseph Stockyards v United States 298 US 38,84 (1936) that "The supremacy of Law demands that there shall be opportunity to have some court decide whether an erroneous rule of law was applied"..

4. In Tooahnippah v Hickel 397 US 598 (1970) reversing and remanding sub nom. High Horse v Tate 407 F 2^{d} 394 (10th Cir 1969) - Court concluded that Secretary of Interiors decision was subject to judicial review. It says that

aggrieved persons may obtain review of administrative decisions. (App.p.14-17)

5. In City of Chicago v United States 396 U.S. 162 (1970) the question was whether orders of the I.C.C. which discontinued investigations respecting notice to railroads to terminate or change the operation of interstate passengers was judicially reviewable. The lower Court had held that decisions terminating investigations were not "orders" within the statue providing for review of I.C.C. orders. The Supreme Court reversed, asserting that the decision below virtually revived the "negative order" doctrine repudiated a generation ago in the Rochester Telephone Case 307 US 125 (1939)

(a) Petitioner argues that the refusal to issue a complaint by General Counsel of N.L.R.B. is in reality a "negative order", and in any event Justice Brandeis' classic statement in St. Josephs Stockyards v United States

(supra) should be observed.

5. Petitioner wishes to argue from Justice Story's Commentaries on The Constitution Of The United States (1970 Da Capo Press edition). Volume 111 Chapter XLV-Powers of Congress - Incidental.

Sec 1231 - The next power of Congress is "to make all laws, which shall be necessary and proper for carrying into execution the foregoing power, and all other powers vested by this Constitution in the government of the United States or in any department or officer thereof".

.....Whenever, therefore a question arises concerning the Constitutionality of a particular power, the first question is, whether the power be expressed in the Constitution. If it be, the question is decided. If it be not expressed, the next inquiry must be whether it is properly an incident to an express power, and necessary to its execution.

If it be, then it mey be exercised by Congress. If not, Congress cannot exercise it.

(a) Petitioner argues that since due process and the protection of property rights, and equal treatment before the law is expressly written into the Constitution by the 5th, 9th, and 14th Amendments, Congress cannot proscribe those rights.

6. Petitioner wishes to include in the appendix attached hereto citations and excerpts from Professor Jaffe's thesis on Judicial Review published in various volumes of Harvard Law Review.

Conclusion

For the reasons set forth above and in the petition for writ of certiorari, and Reply Brief, it is respectfully urged that rehearing be granted and that; upon such rehearing, a writ of certiorari be granted and that upon

such rehearing, a writ of certiorari issue to the Court of Appeals for the Second Circuit.

Respectfully submitted,

Archie Peltzman

Archie Peltzman
Petitioner Pro Se

Certificate Of Counsel

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the Rules of this Court.

Archie Peltzman
Archie Peltzman
Petitioner Pro Se

Oct. 24, 1972

APPENDIX

From Volume 70 Harvard Law Review April 1957 Judicial Review: Constitutional and Jurisdictional Fact.

1. On p 970 - Discussion of Crowell v Benson 285 US at 54-55, 56, 57. Also see John Dickinson, Crowell v Benson - Judicial Review of Administrative Determinations of "Constitutional Fact" 80 U. Pa. L. Rev. 1055, 1077-82, (1932) See Also Davis - Unreviewable Administrative Action, 15 F.R.D. 411, 426, (1954)

On p 965 - Discussion of People ex rel Cook v Board of Police 39 N.Y. 506 (1868). Professor Jaffe says Judge Woodruff, writing for the New York Court Of Appeals, boldly swept aside the language of jurisdictional fact and held that certiorari reaches all questions of law whether of liability or procedure...

2. From Volume 71 - Harvard Law Review January (1958), on p 804, Professor Jaffe discusses possibility of judicial power without authority to question validty of a statute or administrative order.

3. From Volume 71 March 1958 Harvard Law Review, on p 800, Professor Jaffe cites Mr. Justice Jackson concurring in Youngstown Sheet & Tube Co v Sawyer 343 US 579, 646 (1952); Referring to the power of the president to execute the law and to the fifth amendment, he said

One gives a governmental authority that reaches so far as there is law, the other gives a private right that authority shall go no further. These signfy about all there is of the principle that ours is a government of laws, not of men, and that we submit ourselves to rulers only if under rules.

On p 790, Professor Jaffe says that though review of the merits may be excluded, a Court may entertain a claim that a statutory procedual right has been denied (citing Robertson v Chambers 341 US 37 (1951).....

The Court of Appeals nevertheless upheld a claim that a statutory procedual right had been violated, a decision which the Supreme Court reversed on the merits.

On p 793, Prof. Jaffe discusses the power of the N.L.R.B. to initiate a complaint and argues that the presence of discretion should not bar a court from considering a claim of illegal or arbitrary use of discretion. See p 774-78 infra.

4. From Harvard Law Review Volume 69 (1955) p 274, Prof. Jaffe says, An agency is not an island entire of itself. It is one of the many rooms in the magnificient mansion of the law. The very subordination of the agency to judicial jurisdiction is intended to proclaim the premise that each agency is to be brought into harmony with the totality of the law; the law as it is found in the statute at hand, the statute book at large, the principles and conceptions of the "Common law" and the ultimate guarantees associated with the Constitution. (emphasis added).